IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.38960 of 2008
PRAKASH SAHNI … … Petitioner
Versus
THE STATE OF BIHAR … Opp.Party
For the petitioner: Shri Birendra Singh

For the State: Shri Dashrath Mehta,A.P.P.

- - - -

2. 16.10.2008 Heard Shri Birendra Singh, learned counsel for the petitioner and Shri Dashrath Mehta, learned Additional Public Prosecutor for the State.

A report is the basis of the F.I.R. There were undeniable recoveries of a knife and a country made pistol from the possession of the petitioner.

WEB COPY NOT OFFICIAL

The contention is that had the learned Sessions Judge taken pains of looking to the provision of Section 37 of the Arms Act, he could have come to a conclusion that the offence could be bailable and could have directed the release of the petitioner.

Section 37 of the Arms Act indicates that a persons if arrested and any arm is recovered from him by any person 'not being a Magistrate of any class or a police officer' he shall deliver that person with arm to the Officer-in-charge of the police Station and

that Officer shall either release that person on his executing a bond with or without surety as directed by him and seize the arm till the appearance of that person before a Magistrate or in case of the person failing to execute a bond as desired by the Officer-in-charge of the Police Station to be furnished, produce that person and that arms before the Magistrate. If the learned Judge could have compared this provision with Section 436 of the Code of Criminal Procedure, he could have not dismissed the prayer for bail. The judicial incompetence appears reflected through the order.

Let the petitioner Prakash Sahni be released from custody on his furnishing a bond of Rs. 1000/-(one thousand) with one surety of the like amount to the satisfaction of the Chief Judicial Magistrate, Katihar, in Azam Nagar P.S. Case No.35 of 2007.

Let a copy of this order be communicated to the learned Sessions Judge, Katihar.

WEB COPY NOT OFFICIAL

Kanth (Dharnidhar Jha, J.)